

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish A Framework for Network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003  
(Filed April 7, 1993)

Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.

Investigation 93-04-002  
(Filed April 7, 1993)

**(Verizon UNE Phase)**

**ASSIGNED COMMISSIONER'S AND ADMINISTRATIVE LAW JUDGE'S  
RULING GRANTING MOTION OF TRI-M COMMUNICATIONS INC. (TMC) TO  
INTERVENE, GRANTING MOTION OF TMC IN PART, AND  
SCHEDULING PREHEARING CONFERENCE**

**Summary**

This ruling grants the intervention request of Tri-M Communications d/b/a TMC Communications (TMC) to enter an appearance as a party in the "Verizon UNE Phase" of Rulemaking 93-04-003/Investigation 93-04-002 (OANAD proceeding). The motion of TMC for a ruling establishing an expedited procedural schedule for this proceeding is granted in part in that we will invite interim relief proposals in this matter and take steps to set a final schedule for the case. By this ruling, we announce a prehearing conference (PHC) for June 28, 2002, at 10:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California, to discuss the filing of specific proposals for the interim pricing of unbundled network elements (UNEs) offered by Verizon California (Verizon) and to discuss a schedule for

consideration of cost studies leading to final UNE prices for Verizon in order to conclude this proceeding. Parties shall file and serve PHC statements no later than June 18, 2002.

### **Intervention Request**

TMC seeks to intervene in this proceeding given that it is an established interexchange carrier operating in California and that it has recently begun providing facilities-based local exchange services as well. TMC states that it has a material stake in the prices set for Verizon's UNEs because it intends to enter local exchange markets currently served by Verizon. Further, TMC states that its participation will neither broaden the issues to be addressed nor delay the proceedings. No party opposed TMC's intervention request. Good cause having been shown, the request to intervene should be granted.

### **TMC's Motion for Expedited Schedule**

On January 4, 2002, TMC filed a motion requesting a ruling in this proceeding establishing an expedited procedural schedule to determine recurring and non-recurring prices for Verizon's UNEs. TMC noted that the Commission has taken no action in this proceeding since technical workshops were held in December 2000. In its motion, TMC suggests that the Commission should invite new or updated cost studies and that it should also consider a procedure to set interim rates for Verizon's UNEs, similar to the procedure used in Pacific's UNE Reexamination proceeding (Application (A.) 01-02-024/A.01-02-035).

Responses to TMC's motion were filed by Verizon, XO California Inc. (XO), and a joint response by Worldcom, Inc., AT&T Communications of California, Inc. ICG Telecom Group, Inc., Office of Ratepayer Advocates and The Utility Reform Network (jointly referred to as Joint Commenters). Verizon

opposes TMC's motion on the grounds that the Commission should wait until the legal uncertainty at the Supreme Court surrounding the TELRIC pricing methodology is resolved before proceeding with this matter. Once the TELRIC litigation is resolved, Verizon requests the opportunity to file new cost studies to set its permanent recurring and noncurring prices, including shared and common costs, and price floors for Category II services.

XO and the Joint Commenters oppose TMC's suggestion to invite new or updated costs studies, citing the additional delay this would cause. Joint Commenters state their support for the process outlined in a November 6, 2000 ruling by Assigned Commissioner Duque and Administrative Law Judge Duda to arrive at interim rates for Verizon UNEs.<sup>1</sup> That same November 2000 ruling rejected the notion of accepting updated or new cost studies.<sup>2</sup> While opposing new or updated cost studies, the Joint Commenters express support for a more expeditious procedure to set interim rates. XO suggests applying Pacific's adopted UNE prices as interim rates for Verizon, wherever such prices are lower than Verizon's current UNE prices (as set in Verizon's interconnection agreements).

In reply, Verizon opposes XO's request to apply Pacific's UNE rates to Verizon as an interim relief measure. Verizon argues that the request ignores the legal uncertainty surrounding the TELRIC methodology. Joint Commenters

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<sup>1</sup> *Assigned Commissioner's and Administrative Law Judge's Ruling Setting Scope of this Phase and Announcing Technical Workshops*, November 6, 2000.

<sup>2</sup> *Id.* at 4-6.

oppose Verizon's repeated attempts to delay this proceeding pending the outcome of the TELRIC litigation at the Supreme Court.

Finally, in its reply to other parties' filings, TMC appears to reverse course and amend its initial motion by removing its request for the filing of new or updated cost studies. TMC now urges the Commission to allow interim pricing proposals for Verizon's UNEs. As for permanent Verizon UNE prices, TMC supports their adoption based on the existing 1997 cost filings, along with provisions for an "update mechanism" to subsequently revise the prices.

### **Discussion of TMC Motion**

We are sympathetic to TMC's motion because clearly, we cannot disagree that this proceeding has languished for far too long. While we will not waste time reciting the history of this case, parties are well aware that the delays have resulted from both inadequate cost filings, uncertainty due to litigation surrounding the Federal Telecommunications Act of 1996, and more recently, the Commission's own resource constraints which have been exacerbated by the recent energy crisis in California. While we may have had good intentions in November 2000 to adopt interim rates for Verizon based on the existing record, the resulting passage of time forces us to reconsider what we said then. Indeed, we note that TMC itself reconsidered its own request from the time it filed its motion in January 2002 to the time it replied a month later. TMC, although initially requesting new cost filings, now emphasizes the need for expedited interim pricing for Verizon's UNEs.

It should be abundantly clear to all concerned that because the Commission has been unable to adopt recurring and nonrecurring UNE prices for Verizon over the five years since the filing of cost studies in September 1997, some form of expedited interim relief is certainly in order while we consider

whether to set final rates based on the 1997 filings, or require new or updated cost filings. The only opposition to the notion of interim relief comes from Verizon, who urges us to wait until the Supreme Court resolves the TELRIC controversy. On May 13, 2002, the Supreme Court issued an opinion in *Verizon Communications, Inc. et al. v. FCC* (Case No. 00-511) upholding the TELRIC methodology. With the Supreme Court's action, Verizon's argument is now moot. To the extent TMC's motion requests that we consider interim pricing for Verizon, the motion is granted.

In our November 2000 ruling, we had already set forth a process to adopt interim rates. In that ruling, we envisioned choosing between the two models filed in 1997--Verizon's Integrated Cost Model (ICM) or the HAI Model Version 4.0 filed jointly by AT&T and WorldCom (formerly MCI)). We would then seek modifications to the chosen model. We decided to consider any rates that resulted from that effort "interim" given then pending litigation at the Supreme Court concerning the TELRIC methodology. Now that the Supreme Court has upheld the TELRIC methodology, we find that even if we were to proceed with the process we described in the November 2000 ruling, there would be no need to call any rates resulting from that effort "interim." Indeed, that process could still be used to set final rates for Verizon.

Nevertheless, we are concerned that the process we outlined in November 2000 to set "interim" rates cannot be accomplished very quickly given our review of the two competing models thus far and the significant modifications that we have preliminarily found are required to either model. Moreover, we believe it would be unwise to set permanent UNE rates for Verizon based on cost models and studies filed in 1997. Given the passage of time, we are concerned that

refreshing both the parties' and the staff's memories of this stale record will take too long to be meaningful in either an interim or permanent ratesetting exercise.

We believe there is value in soliciting input from the parties on an expedited method to grant interim relief, and on a process for updating the 1997 cost filings in order to set final recurring and nonrecurring prices for Verizon's UNEs, shared and common costs, and Category II price floors. We do not agree with TMC, Joint Commenters, and XO that we should spend time adopting permanent rates based on 1997 cost filings, only to revise them immediately thereafter through some sort of a "reexamination process" similar to the proceedings currently underway for Pacific. (*See* A.01-02-024 et al. and A.02-02-031/A.02-02-032/A.02-02-034/A.02-03-002). In our opinion, it makes more sense to adopt interim rates on an expedited schedule, and then set permanent rates based on an updated record. We think it is ill advised to adopt rates based on cost filings that are indisputably out of date while relying on a burdensome future reexamination process that neither the Commission nor the parties may have the resources to withstand.

Therefore, we will hold a PHC on June 28, 2002, at 10:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California, to discuss what types of interim pricing methodologies the parties might propose and an expedited schedule for such filings. At the PHC, we will also discuss a potential schedule for completion of this case based upon the filing of updated or new cost studies. Based on the discussions at the PHC, we would endeavor, either at the PHC or shortly thereafter, to:

1. Provide guidance on the types of interim pricing methodologies we would consider.

2. Set a deadline for the submittal of comprehensive and specific interim UNE pricing proposals for Verizon.
3. Set a schedule to consider these interim proposals and issue an interim pricing decision.
4. Decide whether to allow updated or new cost filings to set permanent UNE prices for Verizon.
5. Set a schedule to set permanent UNE recurring and nonrecurring prices, including a mark-up for shared and common costs, and Category II price floors for Verizon.

In advance of the PHC, parties should file and serve PHC statements regarding their preliminary thoughts on the type of interim pricing methodology the Commission should consider as well as the other points listed above.

Interim relief proposals that we may consider could include, but are not limited to, using any of the following to set interim rates for Verizon:

- The ICM or HAI Model Version 4.0 filed thus far along with specific modifications to produce interim rates;
- Some form of a trend analysis as was used to set updated loop prices for Pacific's UNEs in the 2001 UNE Reexamination (*see* D.02-05-042), perhaps using the HAI Model Version 5.2a used in that decision; and
- Some level of discount from Verizon's current UNE rates set forth in its interconnection agreements.
- Currently adopted rates from Pacific.

Parties are free to propose other methodologies for interim relief. Parties are directed to file and serve PHC statements on the issues listed above, and any other issues they believe should be discussed at the PHC, no later than June 18,

2002. The PHC statements should be filed and served in paper form. In addition, parties should send an electronic copy to the service list, to the assigned ALJ at [dot@cpuc.ca.gov](mailto:dot@cpuc.ca.gov), and to the office of the Assigned Commissioner at [ftf@cpuc.ca.gov](mailto:ftf@cpuc.ca.gov).

**IT IS RULED** that:

1. The motion to intervene filed by Tri-M Communications d/b/a TMC Communications is granted.



2. The Commission's Process Office and the parties are directed to add the following name to the service list for this proceeding as an appearance:

John Clark  
Goodin, MacBride, Squeri, Ritchie & Day, LLP  
505 Sansome Street, 9<sup>th</sup> floor  
San Francisco, CA 94111  
415-765-8443  
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3. The January 4, 2002 motion of TMC is granted in part as set forth herein, and denied in all other respects.

4. A prehearing conference (PHC) will be held on June 28, 2002, at 10:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California, as set forth herein.

5. Parties shall file and serve PHC statements on June 18, 2002, with electronic service at dot@cpuc.ca.gov and ftf@cpuc.ca.gov on the same date.

Dated May 31, 2002, at San Francisco, California.

/s/ HENRY M. DUQUE

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Henry M. Duque  
Assigned Commissioner

/s/ DOROTHY J. DUDA

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Dorothy J. Duda  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's and Administrative Law Judge's Ruling Granting Motion of Tri-M Communications Inc. (TMC) to Intervene, Granting Motion of TMC in Part, and Scheduling Prehearing Conference on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated May 31, 2002, at San Francisco, California.

/s/ FANNIE SID

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Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.